

of sex or marital status with respect to any aspect of a credit transaction.

(g) *Compliance with special laws and regulations.* (1) Applicants will be required to comply with applicable Federal, State and local laws and regulations governing building construction, diverting, appropriating, and using water, including use for domestic purposes; installing facilities for draining land; and making changes in the use of the land affected by zoning regulations.

(2) State Directors and Farmer Programs Staff members will consult with SCS, U.S. Geological Survey, State Geologist or Engineer, or any board having official functions relating to water use or farm drainage requirements and restrictions for water and drainage development. State supplements will be issued to provide guidelines which:

(i) State all requirements to be met, including the acquisition of water rights.

(ii) Define areas where development of ground water for irrigation is not recommended.

(iii) Define areas where land drainage is restricted.

[53 FR 35692, Sept. 15, 1988, as amended at 62 FR 9356, Mar. 3, 1997]

§ 1943.24 Special requirements.

(a) *Determining whether a farm will permit a feasible plan.* The County Supervisor is responsible for making a preliminary determination as to whether a loan should be made on the farm. This determination will be based on a personal inspection of the farm and an evaluation of such factors as productivity of the land; location, conditions, and adequacy of the buildings; approximate value of the farm, roads, schools, markets, or other community facilities; tax rates; and adequacy of the water supply. A decision also will be made on the suitability of the farm for a specialized farm operation, and development needed to make it acceptable for the planned operation of the farm.

(b) *Dwellings and other essential buildings.* (1) Buildings adequate for the planned operation of the farm must be available for the applicant's use after the loan is made. The necessary buildings will be located on the applicant's

farm. Exceptions of this requirement are when:

(i) The applicant already owns an adequate, decent, safe, and sanitary dwelling, suitable for the family's needs, and located close enough to the farm so the farm may be operated successfully, it will not be necessary to provide a dwelling on the farm.

(ii) The applicant has a long-term lease on acceptable rented buildings that are adjacent to or near the farm, or the applicant occupies suitable buildings which the applicant will eventually inherit or be permitted to purchase from a relative.

(iii) The farm does not have an adequate dwelling and the applicant owns a suitable mobile home which will be used as the applicant's home, the applicant will not be required to build a dwelling. A mobile home will not be considered to add value to the farm but FO funds may be used to finance anchoring the home.

(2) When loan funds are needed for a dwelling and an applicant is eligible for a Rural Housing (RH) loan, it will be processed simultaneously with the FO loan. However, in such cases if a small amount is needed for dwelling improvements, FO funds may be used. Dwellings financed with RH funds will meet the requirements for such loans as provided in subpart A of part 1944 of this chapter.

(c) *Land and facility development.* Development needed to make the farm ready for a successful operation will be planned during loan processing. The plans should provide for completing the development at the earliest practicable date. Recommendations of representatives of the Forest Service, Soil Conservation Service, State Agricultural Extension Service, and State Planning and Development Agency or local planning groups should be included in the development plan and the Farm and Home Plan. In planning such development with the applicant, the County Supervisor will encourage the applicant to use any cost-sharing assistance that may be available through any source such as the Agricultural Stabilization and Conservation Service (ASCS) programs.

(d) *Insurance.* (1) Insurance must be obtained on any property acquired

with, or serving as primary security on an FO loan in accordance with subpart A of part 1806 of this chapter.

(2) Applicants must comply with the catastrophic risk protection insurance (CAT) requirement by either:

(i) Obtaining at least the available CAT level of coverage for each crop of economic significance, as defined by the Federal Crop Insurance Corporation, or

(ii) Waiving eligibility for emergency crop loss assistance in connection with the uninsured crop. FSA emergency (EM) loss loan assistance is not considered emergency crop loss assistance for the purpose of the crop insurance waiver on the uninsured crop.

(3) See § 1943.23(a) of this subpart for information about flood or mudslide hazard areas.

(e) *Income from other than owned acreage.* When loan soundness depends on income from other sources in addition to income from owned land, it will be necessary to determine that:

(1) There is reasonable assurance that any rented land which the applicant depends on will be available; and/or

(2) Any off-farm employment the applicant depends on is likely to continue.

(f) *Life estates.* When life estates are involved, loans may be made:

(1) To both the life estate holder and the remainderman, provided:

(i) Both have a legal right to occupy and operate the farm;

(ii) Both are eligible for the loan; and

(iii) Both parties sign the note and mortgage.

(2) To the remainderman only, provided:

(i) The remainderman has a legal right to occupy and operate the farm; and

(ii) The lien instrument is signed by the remainderman, life estate holder, and any other party having any interest in the security.

(3) To the life estate holder only, provided:

(i) There is no legal restriction placed on a life estate holder who occupies and operates a farm; and

(ii) The lien instrument is signed by the life estate holder, remainderman,

and any other party having any interest in the security.

(g) *Farm or residence situated in different counties.* If a farm is situated in more than one State, county or parish, the loan will be processed and serviced in the State, county or parish in which the borrower's residence on the farm is located. However, if the borrower's residence is not situated on the farm, the FO loan will be serviced by the County Office serving the county in which the farm or a major portion of the farm is located unless otherwise approved by the State Director.

(h) *Subdivision of large tracts of farmland, other than FmHA or its successor agency under Public Law 103-354 inventory farms, into family farm units.* County Supervisors should investigate any large tract that is offered for sale to determine the feasibility of making FO loans to enable several applicants to acquire the tract. In considering the feasibility of a tract for subdivision into family farms, the following are some of the factors that must be considered:

(1) Productivity of the land and its suitability for operation as a family farm;

(2) Cost of the land and improvements;

(3) Accessibility to roads, markets, schools, right-of-way, easements, and other services.

(4) Disposition or omission of any part of the tract that is not suitable; and

(5) The number of eligible applicants in the area.

(i) *Liens junior to the FmHA or its successor agency under Public Law 103-354 lien.* A loan will not be approved if a lien junior to the FmHA or its successor agency under Public Law 103-354 lien is likely to be taken simultaneously with or immediately subsequent to the loan closing to secure any debt the borrower may have at the time of loan closing or any debt that may be incurred in connection with the FO loan, such as for a portion of the purchase price of the farm or money borrowed from others for payments on debts against the farm, unless the total debt against the security would be within its market value.

(j) *Graduation of FO borrowers.* If, at any time, it appears that the borrower may be able to obtain a refinancing loan from a cooperative or private credit source at reasonable rates and terms, comparable to those for loans for similar purposes and periods of time prevailing in the area, the borrower will, upon request, apply for and accept such financing. A borrower paying a rate of interest less than the market rate will be expected to pay the current rate when able to do so.

[53 FR 35692, Sept. 15, 1988, as amended at 57 FR 18678, Apr. 30, 1992; 58 FR 26681, May 5, 1993; 59 FR 25801, May 18, 1994; 62 FR 9356, Mar. 3, 1997]

§ 1943.25 Options, planning, and appraisals.

(a) *Optioning land.* an applicant is responsible for obtaining options on real property bought. Form FmHA or its successor agency under Public Law 103-354 440-34, "Option to Purchase Real Property," should be used if possible. Other forms may be used if acceptable to all parties concerned and to FmHA or its successor agency under Public Law 103-354. When an FmHA or its successor agency under Public Law 103-354 form is not used, a provision should be included which makes the option contingent upon the FmHA or its successor agency under Public Law 103-354 making a loan to the buyer.

(1) The County Supervisor should advise the applicant to have an understanding with the seller on such items as:

- (i) Land description and number of acres;
- (ii) Buildings and fixtures included in the transaction. The applicant should determine the condition of property attached to the land and the working condition of any fixtures with movable parts;
- (iii) Minerals and the effect any mineral reservation has on the land value and operating it as a farm;
- (iv) Access to the land or any part of it;
- (v) The party responsible for taxes and insurance; and
- (vi) The party who will receive the income from the land during the crop year of the transaction.

(2) The applicant should decide if the applicant wants the option recorded and is responsible for paying any recording fees.

(b) Farm business plans will be completed as provided in subpart B of part 1924.

(c) *Appraisals.* (1) Except as provided in paragraph (c)(2) of this section, real estate appraisals will be completed on forms in accordance with § 761.7 of this title, and in the case of an appraisal of residential real estate, the appropriate Agency form (available in each Agency State Office) or other format that contains the same information, by a designated FmHA or its successor agency under Public Law 103-354 real property appraiser, or FmHA or its successor agency under Public Law 103-354 State-certified general contract real property appraiser. Appraisals are necessary when real estate is taken as primary security, as defined in § 1943.4 of this subpart, and when loans are serviced in accordance with subpart S of part 1951 of this chapter. Real estate appraisals are not required when real estate is taken as additional security, as defined in § 1943.4 of this subpart. However, the County Supervisor will document in the running record the estimated market value of the additional security and the basis for the estimate.

(2) Other real estate appraisals completed by other State-certified general appraisers may be used providing such appraisals meet the ethics, competency, departure provisions, etc., and sections I and II of the Uniform Standards of Professional Appraisal Practices, and contain a mineral rights appraisal as set out in paragraph (c)(4) of this section. Prior to acceptance, the appraisal must have an acceptable desk review (technical) completed by an FmHA or its successor agency under Public Law 103-354 designated review appraiser.

(3) Real estate appraisals will be completed as provided in § 761.7 of this title. The rights to mining products, gravel, oil, gas, coal, or other minerals will be considered a portion of the security for Farmer Programs loans and will be specifically included as a part of the appraised value of the real estate securing the loans using Form FmHA or its successor agency under Public